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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH P. CUVIELLO and DENIZ
BOLBOL, individually,

Plaintiffs

v.

ROWELL RANCH RODEO, INC., et al.,

Defendants

Case No. 3:23-cv-01652-VC

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO ROWELL RANCH
RODEO's CROSS-MOTION FOR
SUMMARY JUDGMENT AND REPLY
TO OPPOSITION TO PLAINTIFFS'
JOINT MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: August 15, 2024

Time: 10:00 a.m.

Judge: Hon. Vince Chhabria

Courtroom: 5, 17th Floor

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Memorandum of Points and Authorities

I. Introduction

As to Defendants Rowell Ranch Rodeo, Inc. and Doe Defendants 1 and 2 (now known to Plaintiffs to be Gary Houts and George Ferris, Dkt. 84-1 ¶¶15, 35), Plaintiffs Joseph P. CuvIELlo and Deniz Bolbol jointly seek summary judgment on their First Cause of Action (Assault); Second Cause of Action (Battery); Third Cause of Action (Violation of Civil Code, section 52.1(c)); Fourth Cause of Action (Violation of Civil Code, section 51.7); and their Fifth Cause of Action (Violation of Article I, Section 2(a) of the California Constitution and Civil Code, section 52.1). Defendants cross-move for summary judgment, but do not specify what relief they seek. Dkt. 116. Because the undisputed, uncontroverted, video-documented facts at issue require a finding for Plaintiffs as a matter of law on these five claims, this Court should enter judgment in Plaintiffs' favor on their First, Second, Third, Fourth, and Fifth Causes of Action.

II. Plaintiffs Response to Defendants' Evidence and Objections

A. Response to Section I(A)

Plaintiffs do not generally dispute the facts alleged in Defendants' "Undisputed Material Facts," Dkt. 116, § II (A), however, some of Defendants' "facts" misstate the evidence or present conclusions of law and argument as factual representations. Other facts are unsupported by citations to evidence of any sort. Plaintiffs, therefore, lodge the following formal objections:

- On page 7, line 5, Defendants characterize a conversation between Gary Houts and Plaintiffs as "antagonistic back-and-forth."

This sentence is attributed to Plaintiffs' testimony and video evidence. Dkt. 116, p. 7:6-8. No speakers make these statements. Plaintiffs object for lack of foundation under FRE 602 and 901, because they are argumentative under FRE 403, and because the video evidence speaks for itself.

- On page 7, lines 21-22 and 26-27, Defendants claim, that Plaintiff CuvIELlo testified during his deposition that "he was not afraid of arrest on May 20, 2021, after having interacted with Deputy Mayfield and Hart." And "Plaintiff CuvIELlo was not afraid of arrest."

1 Plaintiff CuvIELlo did not testify as presented. Plaintiffs object to these statements for
 2 misstating the evidence under FRE 403, because they represent incomplete evidence under FRE
 3 106, and because they are argumentative in violation of FRE 403.

- 4 • On page 8, lines 6-28 through page 9, lines 1-3, Defendants attempt to summarize Plaintiffs' video evidence but uses argument to characterize the documented interaction between
 5 George Ferris and Plaintiffs CuvIELlo and Bolbol.

6 Plaintiffs object to the argument contained in this paragraph for lack of foundation under
 7 FRE 602 and 901, because it misstates the evidence under FRE 403, and because the evidence
 8 speaks for itself.

- 9 • On page 9, Defendants transcribe Plaintiffs' video evidence, but insert additions to the
 10 transcription with bracketed information that is not attributed to any evidence or speaker.

11 Plaintiffs object to the bracketed information contained in these transcriptions as
 12 argumentative in violation of FRE 403, for lack of foundation under FRE 602 and 901, and because
 13 the evidence speaks for itself.

- 14 • On page 9, lines 19-22, Defendants state that Gary Houts made "imperceptible contact with
 15 Plaintiff CuvIELlo," and Plaintiff CuvIELlo's reaction "does not indicate any fear or
 16 intimidation."

16 Defendants attribute these statements and characterizations to Plaintiff CuvIELlo and his
 17 video evidence, but Plaintiff CuvIELlo did not make these statements. Plaintiffs object to these
 18 statements as argumentative in violation of FRE 403, for statement for lack of foundation under
 19 FRE 602 and 901, and because the evidence speaks for itself.

- 20 • On page 10, lines 2-5, Defendants include a paragraph of information without attribution to
 21 evidence of any sort.

22 Unattributed evidence may not be considered for lack of foundation under FRE 602 and 901.

23 **B. Response to Section II(B)**

24 As a preliminary matter, nothing in the Federal Rules of Evidence suggest that a deposed
 25 witness relinquishes their right to testify at trial, including through affidavits submitted in support of
 26 summary judgment briefing. FRE 32. Indeed, much to the contrary, an available witness's
 27 deposition testimony may only be used in limited circumstances. FRE 32, 804(b)(1). On page 10,

1 lines 10-11, Defendants state that Plaintiffs' declarations conflict with their deposition testimony,
2 but they point to no specific contradictions. Dkts. 89, 115.

3 Next, due to an inadvertent filing error, Plaintiffs did not file the Declarations of Robyn
4 Newkirk or Michael Sage when they filed their Motion for Summary Judgment, though they used
5 them for evidentiary support in their briefing. Dkt. 84. Upon learning of the error, Plaintiffs
6 immediately filed these declarations on June 28, 2024. Dkts. 113, 114. Because Defendants
7 obtained an extension from the court to file their summary judgment papers three days late on July
8 2, Defendants had time to review the declarations when preparing their opposition briefing.
9 Plaintiffs also incorporate the declarations filed at Docket Numbers 113 and 114 as though these
10 declarations are being filed in support of their Opposition to Defendants' Cross-Motion for
11 Summary Judgment.

12 Finally, Plaintiffs respond to Defendants list of objections and disputes of Plaintiffs'
13 Statement of Undisputed, Material Facts (pages 10:15-15:8) as follows:

14 1. Plaintiffs CuvIELLO and Bolbol are not offering testimony as expert witnesses. These
15 statements are offered based on their personal knowledge and experience under FRE 602 and 701,
16 and are relevant under FRE 401, as Defendant HARD recognizes Plaintiffs are "extremely
17 experienced demonstrators." Dkt. 115, p. 14:14.

18 2. The Declaration of Jessica Blome includes a description of Exhibit 22 at paragraphs 1-2,
19 and Exhibit 22 is filed at Dkt. 84-27.

20 3. The Declaration of Jessica Blome includes a description of Exhibit 22 at paragraphs 1-2,
21 and Exhibit 22 is filed at Dkt. 84-27.

22 4. No dispute.

23 5. Plaintiffs offer this evidence based on their personal knowledge and experience under
24 FRE 602 and 701. Their testimony is evidence, and Defendants present no evidence to contradict it.

25 6. Plaintiffs CuvIELLO and Bolbol are not offering testimony as expert witnesses. These
26 statements are offered based on their personal knowledge and experience under FRE 602 and 701,
27

1 and are relevant under FRE 401, as Defendant HARD recognized Plaintiffs are “extremely
2 experienced demonstrators.” Dkt. 115, p. 14:14.

3 7. Plaintiffs exhibits reference what is stated. At page 000173 (pdf p. 34), the transcript of
4 audio prepared by Defendant Alameda County Sheriff’s Office (ACSO) and produced by Plaintiffs
5 as Exhibit 33B, Dkt. 84-39, Defendant Gary Houts states, “If you want to do this, we have an area
6 set up for you up there. The free speech area’s up there not here.” He also states, “You’re not in the
7 area.” Dkt. 84-39 at 000173 (pdf p. 26:19-27:6); Dkt. 84-3, ¶15, Exh. 1.

8 8. Defendants’ characterization of Plaintiff Cuiello’s deposition testimony misstates the
9 evidence under FRE 403, represents incomplete evidence under FRE 106,¹ and is argumentative in
10 violation of FRE 403. Moreover, the statement “Rowell Ranch disputes this alleged fact because
11 Plaintiffs continued to protest for 2 more days which contradicts their claim of feeling intimidated,”
12 because it misstates the evidence under FRE 403, represents incomplete evidence under FRE 106,
13 and is argumentative in violation of FRE 403. This statement, moreover, is unattributed, so it lacks
14 foundation under FRE 602 and 901.

15 9. Plaintiffs restate and incorporate their response to Defendants’ objection to Paragraph 8
16 as their response to Defendants’ objection to Paragraph 9 as though fully set forth herein.

17 10. Plaintiffs restate and incorporate their response to Defendants’ objection to Paragraph 8
18 as their response to Defendants’ objection to Paragraph 9 as though fully set forth herein.

19 11. The video evidence speaks for itself. Each of Defendant Houts’s interactions with
20 Plaintiffs is relevant.

21 12. Plaintiffs Cuiello and Bolbol are not offering testimony as expert witnesses under 701.
22 These statements are offered based on their personal knowledge and experience under FRE 602.
23 Plaintiffs’ video evidence speaks for itself and is relevant under FRE 402.

24
25
26 ¹ Defendants’ citation of Plaintiff Cuiello’s deposition statement is a blatant misrepresentation. Exhibit 1 to
27 Declaration of Osmaan Khan skips from deposition page 87 (Dkt. 116-1, p. 6) to page 92 (116-1, p. 7). Plaintiff’s
28 deposition statement that he did not believe he would be arrested was in the context of Mayfield having completed his
call to his Sergeant On Duty and, thereafter, ceased to threaten Plaintiffs with arrest. Obviously, without a threat of
arrest there would be no fear of arrest. Defendants’ evidence is incomplete under FRE 106.

C. Response to Section II(C)

Plaintiffs respond to Defendants list of objections and disputed facts (pages 15:11-16:6) as follows:

1. Paragraph 1 contains argument regarding the content of Plaintiffs’ video evidence in Exhibit 28 and ACSO transcriptions of Defendant Houts’ call to ACSO Dispatch and the resulting internal law enforcement communications. Dkts. 84-38, 84-39. This paragraph does not contain any new facts supported by evidence, so to the extent it is offered as “additional fact,” these statements lack foundation under FRE 602 and 901.

2. Plaintiffs object to the first statement contained in Paragraph 2 because it misstates the evidence under FRE 403, represents incomplete evidence under FRE 106, and is argumentative in violation of FRE 403.

3. Paragraph 3 contains argument regarding the content of Plaintiffs’ video evidence in Exhibit 28. This paragraph does not contain any new facts supported by evidence, so to the extent it is offered as “additional facts,” these statements lack foundation under FRE 602 and 901.

4. Paragraph 4 lacks attribution to evidence of any sort. To the extent it is offered as “additional facts,” these statements lack foundation under FRE 602 and 901.

5. The first sentence of Paragraph 5 lacks attribution to evidence of any sort.

III. Argument

A. Defendants attempted or did interfere with Plaintiffs’ rights in violation of the Bane Act, Civil Code, section 52.1.

Defendants Rowell Ranch Rodeo, Gary Houts, and George Ferris do not dispute that Rodeo Park is a public forum or that Plaintiffs were engaged in constitutionally protected free speech activities at the Rodeo Event on May 20 and 21, 2022. *See generally* Dkt. 116. Defendants HARD and Kevin Hart, moreover, in their Cross-Motion for Summary Judgment, admit that their Free Speech Area constitutes an unreasonable—and therefore illegal—time, place, and manner restriction on free speech under California and U.S. Constitutions. Dkt. 115, p. 1:24-26 (“HARD and Hart do not dispute Plaintiffs’ argument that the “Free Speech Zone” as constituted on the date

of the event was an unreasonable time, place, and manner restriction of free speech.”). Once a constitutionally protected right has been established, Section 52.1 requires a showing that the defendant, “by the specified improper means of threats, intimidation, or coercion, tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.” *Austin B. v. Escondido Union School Dist.*, 149 Cal.App.4th 860, 883 (2007). The word “interferes” means violates. *Id.* “[A] defendant is liable if they tried to or did interfere with a plaintiff’s constitutional rights.” *Austin B.*, 1149 Cal.App.4th at 883 (citing *Venegas v. County of Los Angeles*, 32 Cal.4th 820, 841-843 (2004)). The court must evaluate alleged intimidation to determine “whether a reasonable person, standing in the shoes of the plaintiff would have been intimidated by the actions of the defendants and have perceived a threat.” *Richardson v. City of Antioch*, 722 F.Supp.2d 1133, 1147 (N.D. Cal. 2010) (citing *Winarto v. Toshiba America Electronics Components, Inc.*, 274 F.3d 1276, 1289-1290 (9th Cir. 2001)). “To hold otherwise ‘would be unjust’ as it would ‘allow a defendant to escape liability for a First Amendment violation merely because an unusually determined plaintiff persists in his protected activity.’” *Brodheim v. Cry*, 584 F.3d 1262, 1271 (9th Cir. 2009)(citing *Rhodes v. Robinson*, 408 F. 3d 559, 569 (9th Cir. 2005)).

Therefore, the Court must decide whether Defendant Rowell Ranch Rodeo, through its agents Defendants George Ferris and Gary Houts, used threats, intimidation, or coercion in an attempt to interfere with Plaintiffs’ constitutionally protected free speech activity in violation of the Bane Act, Civil Code, section 52.1.

1. Defendant George Ferris intended to interfere with Plaintiff Bolbol’s constitutionally protected free speech activity in violation of Section 52.1.

The Bane Act requires that the challenged conduct be “intentional.” *Simmons v. Superior Court*, 7 Cal.App.5th 113, 1125 (2016). But in evaluating intentionality, it is irrelevant whether Defendants “recognize[d] the [unlawfulness] of their acts” so long as they acted “in reckless disregard” for Plaintiffs’ constitutional rights. *Cornell v. City and County of San Francisco*, 17 Cal.App.5th 766, 803-804 (2017). Acting with “reckless disregard” means acting “willfully,”

1 *People v. Lashley*, 1 Cal.App.4th 938, 949 (1991), which simply means Defendants acted
 2 “intentionally” to achieve the desired outcome, regardless of whether they understood the outcome
 3 would in-fact violate Plaintiffs’ rights. *Anderson v. Ford Motor Co.*, 74 Cal.App.5th 946, 972, fn.
 4 15 (2022); *see also Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.App.4th 1134, 1156-1157
 5 (2003) (Intention means that a person’s intended action or omission results in an intended result).
 6 With respect to Defendants argument that the Bane Act requires “specific intent,” Dkt. 116, p.
 7 18:12-13, the court in *Reese* found that “it is not necessary for the defendants to have been ‘thinking
 8 in constitutional *or legal terms* at the time of the incidents, because a reckless disregard for a
 9 person's constitutional rights is evidence of a specific intent to deprive that person of those rights.”
 10 *Reese v. County of Sacramento*, 888 F. 3d 1030, 1045 (9th Cir. 2018)). The only evidence in the
 11 record that the Court could use to establish Defendant Ferris’s intent has been submitted by
 12 Plaintiffs. Indeed, Defendants Rowell Ranch Rodeo and Defendant Ferris did not submit a
 13 declaration on his behalf, in which he could have explained his abhorrent behavior. Accordingly,
 14 Plaintiffs’ video evidence is the only evidence, and it demonstrates that Defendant Ferris repeatedly
 15 blocked Plaintiff Bolbol as she attempted to enter the black lot of the Rodeo Park while holding her
 16 banners and leaflets to protest the rodeo. Dkts. 84-1, ¶35, 84-8, 84-17.

17 To be sure, Defendant Rowell Ranch admits that Defendant Ferris intentionally “blocked”
 18 both Plaintiffs Cuiello and Bolbol, and “yelled” and “shouted” at Plaintiff Bolbol. Dkt. 116,
 19 p.8:19-23. However, Defendant Rowell Rodeo argues that there is no evidence that Defendant
 20 Ferris knew Plaintiffs or what they were doing. *Id.* p. 19:1-2. Again, this argument is unsupported
 21 with citations to any evidence explaining Defendant Ferris’s state of mind or discussing what he
 22 knew when he knew it. The court must infer from Plaintiffs’ interactions with Defendant Ferris,
 23 including his words and conduct, to determine what Defendant Ferris knew on May 21, 2022. On
 24 May 21, Plaintiffs had demonstrated at the front entrance before they headed to the back parking lot
 25 to continue demonstrating. As Plaintiffs walked toward the back parking lot entrance, Plaintiff
 26 Cuiello was carrying a large bag of signs slung over his shoulder, and Plaintiff Bolbol was wearing
 27 a sign, about three feet high and two feet wide, that read “They Buck From Pain Caused By The

1 Bucking Strap” with a photo of a bull bucking. Dkt. 84-1, ¶35. She was also carrying a rolled-up
2 banner, about seven feet tall. Dkts. 84-8, 84-17. Plaintiffs were also with some colleagues who were
3 following Plaintiffs holding signs. *Id.* Plaintiffs were conspicuous in their intentions for entering the
4 back parking lot. Dkts. 84-8, 84-17. That Defendant Ferris did not understand Plaintiffs’ intention is
5 not plausible.

6 Defendants further speculate that Defendant Ferris harassed and blocked Plaintiff Bolbol
7 from accessing the back entrance to “herd” Plaintiffs and at best admonish them for not having
8 tickets to the rodeo.” Dkt 116, p. 18:24-27. The video evidence establishes that Defendant Ferris
9 had little concern for whether Plaintiffs, and their colleagues had tickets. Dkts. 84-8, 84-17. Plaintiff
10 CuvIELLO was leading the procession of demonstrators, and when Defendant Ferris saw Plaintiff
11 CuvIELLO, Defendant Ferris immediately stepped in front of him with his hand out to block his
12 entrance into the public forum and yelled at Plaintiff that he needed a ticket. *Id.* Plaintiff Bolbol told
13 Defendant Ferris not to touch Plaintiff CuvIELLO. *Id.* Defendant Ferris, no longer concerned with
14 whether Plaintiff CuvIELLO had a ticket or not, then turned his attention to Plaintiff Bolbol and
15 aggressively stepped in front of her, blocked her with his body, and began yelling “call the cops.”
16 *Id.* As Plaintiff Bolbol tried to walk around Defendant Ferris, he continually stepped in front of her
17 and pushed his body into her to block her from entering the back entrance. *Id.* Defendant Ferris
18 began shouting in Bolbol’s face “Out, Out.” *Id.*; *see also* Dkt. 84-1, ¶35. Plaintiff Bolbol told
19 Defendant Ferris, “Don’t touch me,” and then Defendant Ferris began to say, “You’re running into
20 me. You’re touching me.” *Id.* As Plaintiff Bolbol repeatedly tried to walk around Defendant Ferris,
21 she told him to, “Stop it.” *Id.* But he did not stop and instead said, “Stop it, go out, you need tickets
22 to the rodeo.” Dkts. 84-8, 84-17. Based on the uncontroverted video evidence, Defendant Ferris
23 never actually asked Plaintiffs or their colleagues if they had tickets and only demanded tickets
24 from Plaintiffs as an excuse to intentionally keep Plaintiffs from accessing a public forum. There
25 can be no doubt that Defendant Ferris would have treated people he assumed to be rodeo patrons
26 differently. Indeed, Plaintiffs have never been asked, nor observed rodeo representatives asking
27

1 anyone else, for copies of their tickets at the parking lot entrance. Suppl. Cuvillo Decl. ¶12; Suppl.
2 Bolbol Decl. ¶12.

3 Defendant Rowell also argues that “at the time of this interaction, Plaintiff Bolbol was not
4 involved in any free speech activities” and “[m]erely making your way to the location you want to
5 pontificate at is not in and of itself free speech.” Dkt. 116, p. 19:5-6. This statement is counter to
6 the video evidence, which shows Plaintiff Bolbol was wearing and displaying her rodeo sign. Dkts.
7 84-8, 84-17. There is no question Plaintiffs were in the process of accessing a public forum to
8 exercise their free speech rights. By intentionally blocking Plaintiffs, Defendant Ferris was
9 interfering, and attempting to interfere, with the exercise of Plaintiffs’ free speech rights by keeping
10 them for accessing a public forum. The video evidence establishes that Defendant Ferris used
11 threats, intimidation, and coercion to do so.

12 Defendants mistakenly argue that “the relevant inquiry under the Bane Act” requires a
13 reasonable person “perceived a threat of violence.” Dkt. 116, p.18:4-6. The element of violence is
14 only necessary if the threat is “speech alone.” *See* Civil Code, sec. 52.1(k). However, conduct can
15 be coercive as well, and nothing in the statute says coercive conduct has to be violent. *Plummer v.*
16 *City of Richmond*, 2015 U.S.Dist.LEXIS 43268 (N.D.Cal. Apr. 1, 2015, No. 14-cv-03962-VC). The
17 video evidence establishes that Defendant Ferris interfered and attempted to interfere with Plaintiff
18 Bolbol’s free speech rights through his conduct that was threatening, intimidating and coercive.

19 Defendant Rowell Ranch argues that Plaintiff Bolbol cannot prove she was harmed by
20 Defendant Ferris, because “there is no evidence [sic] physical injury nor any credible evidence of
21 emotional distress.” Dkt. 116, p. 22:14-15. There is no requirement that a Section 52.1 victim needs
22 to prove physical or mental harm. The only harm Plaintiff Bolbol needs to establish is that
23 “defendant, by the specified improper means (i.e., ‘threats, intimidation or coercion’), *tried to* or did
24 prevent the plaintiff from doing something he or she had the right to do under the law or to force the
25 plaintiff to do something that he or she was not required to do under the law.” *Cornell*, 17
26 Cal.App.5th at 791-792 (citing *Simmons*, 7 Cal.App.5th at 1125 (2016)). “Properly read, the
27 statutory phrase ‘threat, intimidation or coercion’ serves as an aggravator justifying the conclusion

1 that the underlying violation of rights is sufficiently egregious to warrant enhanced statutory
2 remedies, beyond tort relief.” *Cornell*, 17 Cal. App. 5th at 800.

3 Defendant Ferris violated Section 52.1 when he attempted to block and did block Plaintiff
4 Bolbol from accessing the back entrance, through conduct that was threatening, intimidating and
5 coercive, to prevent her from protesting the Rodeo Event. Plaintiff Bolbol is entitled to summary
6 judgment on her Third and Fifth Causes of action against Defendant Ferris.

7 **2. Defendant Gary Houts intended to interfere with Plaintiff CuvIELLO’s**
8 **constitutionally protected free speech activity in violation of Section 52.1.**

9 The uncontroverted evidence shows that on May 21, 2022, Defendant Rowell Ranch
10 Rodeo’s Public Safety Coordinator and now-Defendant Gary Houts intentionally rammed his
11 electric utility vehicle into Plaintiff CuvIELLO in violation of Section 52.1. Dkt. 116, p. 22-23; Dkt.
12 84-1, ¶¶36-37. Defendant Houts was aware that Plaintiff CuvIELLO was an animal rights
13 demonstrator, as Plaintiff was holding an animal rights banner at the time and Defendant Houts had
14 attempted to and failed the night before to have law enforcement relocate Plaintiffs CuvIELLO and
15 Bolbol to the Free Speech Area. Dkt. 84-1, ¶¶14-17. The irony of Defendants’ argument that
16 Rowell Ranch *Public Safety Coordinator* Gary Houts was justified in intentionally driving his
17 electric utility vehicle into Plaintiff CuvIELLO because Defendant Houts needed to assist a disabled
18 person is not lost on Plaintiffs. Dkt. 116, p. 20:14-15. Defendants cite no caselaw or testimony in
19 support of this defense, because there is none. This argument is meritless. As well, Defendants’
20 argument that it was Plaintiff CuvIELLO’s fault that Defendant Houts rammed his vehicle into him is
21 just as meritless. Dkt. 116, p. 20:17-22.

22 The evidence is clear that Defendant Houts was aware from the night before that Plaintiff
23 was an animal rights activist. Dkt. 84-1, ¶¶14-17. The video of the incident also makes clear
24 Defendant Houts knew Plaintiff CuvIELLO was an animal rights activist, as Plaintiff was holding a
25 banner behind Defendant Houts’ vehicle, for which Defendant Houts had just prior told Plaintiff not
26 to touch his vehicle with the banner, and Plaintiff silently complied. Dkt. 84-18. Then Defendant
27 Houts told Plaintiff CuvIELLO to move because he had to move his vehicle, despite that Houts could

1 have easily driven his vehicle forward. *Id.* An unidentified woman then told Plaintiff CuvIELlo he
 2 had to move, and while Plaintiff was explaining to her that Defendant Houts could drive forward,
 3 Defendant Houts intentionally backed up and rammed his vehicle into Plaintiff. *Id.*

4 Although Defendant Houts's may have entered his vehicle to assist a disabled person, his
 5 "substantial" motivation for intentionally driving his vehicle into Plaintiff CuvIELlo was clearly his
 6 disdain for Plaintiffs' political activism and his desire to suppress it, carried over from the night
 7 before. *People v. Lindberg*, 45 Cal.4th 1, 38 (2008) (citing *In re MS*, 10 Cal.4th 698, 719 (1995)).
 8 There can be no doubt that Defendant Houts would have driven forward, without incident, to avoid
 9 a rodeo patron. Because Defendant Houts could have easily driven forward, there was no other
 10 reason for him to ram his vehicle into Plaintiff CuvIELlo other than to attempt to intimidate Plaintiff
 11 with threats and coercion because of Plaintiff's political activism in violation of Section 52.1.
 12 Defendant Houts acted with reckless disregard and "a reckless disregard for a person's constitutional
 13 rights is evidence of a specific intent to deprive that person of those rights." *Reese*, 888 F.3d at
 14 1045.

15 Defendants argue that Plaintiff CuvIELlo cannot prove he was harmed by Defendant Houts's
 16 violation of his Section 52.1 rights, because "there was no doctor visit, no treatment, and most
 17 notably no break in the Plaintiffs ongoing expression of free speech that day or the next when they
 18 returned." Dkt. 116, p. 23:3-5. Again, there is no requirement that a Section 52.1 victim needs to
 19 prove physical or mental harm. The only harm Plaintiff CuvIELlo needs to establish is that
 20 "defendant, by the specified improper means (i.e., 'threats, intimidation or coercion'), *tried to* or did
 21 prevent the plaintiff from doing something he or she had the right to do under the law." *Cornell*, 17
 22 Cal.App.5th at 791-792 (2017) (citing *Simmons*, 7 Cal.App.5th at 1125). "Properly read, the
 23 statutory phrase 'threat, intimidation or coercion' serves as an aggravator justifying the conclusion
 24 that the underlying violation of rights is sufficiently egregious to warrant enhanced statutory
 25 remedies, beyond tort relief." *Cornell*, 17 Cal. App. 5th at 800.

1 Plaintiffs' uncontroverted evidence establishes Defendant Houts interfered and attempted to
 2 interfere with Plaintiff Cuiello's free speech rights through conduct that a reasonable person would
 3 find threatening, intimidating, and coercive. Dkt. 84-18.

4 **B. Defendant Rowell Ranch Rodeo is liable for damages under the Ralph**
 5 **Act, Civil Code, section 51.7.**

6 To prevail on their Ralph Civil Rights Act claims, Plaintiffs must show that: "(1) Defendants
 7 committed or threatened violent acts against Plaintiffs; (2) Defendants were motivated by their
 8 perception of Plaintiffs' political affiliation; (3) Plaintiffs were harmed; and (4) Defendants'
 9 conduct was a substantial factor in causing Plaintiffs harm." *Campbell v. Feld Entertainment, Inc.*,
 10 75 F.Supp.3d 1193, 1205 (2014) (citations and quotations omitted); *see also Austin B.*, 149 Cal.
 11 App. 4th at 880-881. The term "because of" in Section 51.7 means the defendant's "bias motivation
 12 must be a cause in fact of the offense, whether or not other causes also exist." *In re MS*, 10 Cal. 4th
 13 at 719. The offense does not have to be "committed exclusively or even mainly because of the
 14 prohibited bias," but the bias cannot be "so infinitesimal or so theoretical that it cannot properly be
 15 regarded as a *substantial factor* in bringing about the particular result." *Id.* at 719-720.

16 Defendants do not dispute that animal rights is a qualifying political affiliation under Section
 17 51.7. Dkt. 116. And they do not offer any evidence at all to contradict Plaintiffs' evidence that
 18 Defendants George Ferris and Gary Houts were motivated to suppress Plaintiffs' speech out of
 19 animus toward their animal rights activism. Dkt. 116, p. 18-20. Because Defendants did not produce
 20 these key defendants as witnesses, the only evidence of their motivation takes the form of
 21 Defendants Ferris's and Houts's demeanor, language, and speech, as depicted in Plaintiffs' video
 22 evidence.

23 **1. Defendant Houts made a false report to law enforcement in reckless**
 24 **disregard for the truth in violation of Section 51.7.**

25 Under the Ralph Act, "Intimidation by threat of violence" includes, but is not limited to,
 26 "making or threatening to make a claim or report to a peace officer or law enforcement agency that
 27 falsely alleges that another person has engaged in unlawful activity or in an activity that requires
 28

1 law enforcement intervention, knowing that the claim or report is false, or with reckless disregard
 2 for the truth or falsity of the claim or report.” *Id.* at Civ. Code, sec. 51.7 (b)(2)². Defendants raise a
 3 red herring argument in response to Plaintiffs’ Section 51.7 claims, arguing that law enforcement
 4 was “en route” to the Rodeo Event when Defendant Houts made his false report to law enforcement.
 5 Dkt. 116, p. 21:26-27. Whether law enforcement was en route or not, the undisputed evidence
 6 shows that Defendant Houts, while being filmed, called ACSO Dispatch and falsely “told the
 7 dispatcher³ that the Plaintiffs were blocking the parking lot entrance.” Dkt. 116, p. 7:4-8. The video
 8 evidence is clear that Plaintiffs never blocked the parking lot, the entrance, nor access to the Rodeo
 9 Park on any of the days they were protesting.⁴ Defendant ACSO, moreover, admits that the
 10 Plaintiffs never blocked ingress or egress, otherwise Defendant Deputy Mayfield would have
 11 arrested them. Dkt. 89-2, ¶3. Although Defendant Rowell contends “there is a question of fact
 12 regarding the extent to which [Plaintiffs] were blocking ingress,” they cite no evidence to support
 13 this contention. Dkt. 116, p. 7:22-23. Thus, the uncontroverted evidence demonstrates that
 14 Defendant Houts knowingly made a false report to law enforcement based on his animus for
 15 Plaintiffs’ political affiliation as animal rights activists, violating Plaintiffs’ rights under Section
 16 51.7.

17 Whether law enforcement was en route before Defendant Hout’s false report is immaterial.
 18 Indeed, Defendants point to no evidence that Defendant Houts was aware the police were en route
 19 when he falsely reported Plaintiffs to law enforcement, and even if he were, Defendant Houts made
 20 a knowingly made a false report to law enforcement even though he knew they were en route.

23 ² Significantly, although Section 51.7 is intended to address and punish “violence, or intimidation by threat of violence”
 24 against protected classes of people, subsection (b)(2) is the only portion of Section 51.7 that specifically defines an
 instance of “intimidation by threat of violence.” Civ. Code, sec. 51.7(b)(2).

25 ³ On his phone call with law enforcement, Defendant Houts said, “[Plaintiffs] are protesting, and they’re blocking the
 parking lot, they’re blocking access.” Dkt. 84-1, ¶17. The Dispatcher asked if they had signs, and Mr. Houts replied,
 26 “Yes they do, they’re blocking the entrance.” *Id.* Plaintiffs told Mr. Houts to stop lying. *Id.*

27 ⁴ Plaintiff Bolbol’s continuous video evidence establishes Plaintiffs remained in the same spot of the parking lot from
 the time they encountered Defendant Houts to the time they were approached by Defendants ACSO and Deputy
 Mayfield, at which time Defendant Mayfield told Plaintiffs they were “fine.” Dkt. 84-4; *see also* Dkt. 84-46 (ACSO
 body cam footage depicting the area Plaintiffs were standing when the deputies approached them).

Defendants hope the court will find for Defendants on some loose causation theory unsupported by the statute, claiming Defendants cannot be liable for any harm caused to Plaintiffs by law enforcement because law enforcement was on site for the Rodeo Event. Dkt. 116, p. 22:3-9. Defendants misunderstand the harm Plaintiffs need to prove to establish a violation of Section 51.7(b)(2). The California Legislature amended Section 51.7 in 2020 to specifically add subsection (b)(2) “to discourage individuals from using 911 or other communications with law enforcement to harass a person because that person belongs to a protected class.” Suppl. Cuiello Decl. ¶15, Ex. 41. Although the catalyst for the amendment was the increase in calls against people of color, the law is much broader and applies to all calls made to harass people because of political affiliation or protected class status. *Id.*; *see also* Civ. Code, sec. 51.7(b)(1). The Bill “addresse[d] the need to deter discriminatory unlawful calls to law enforcement, and the imperative to prevent individuals from using emergency services as their ‘personal concierge’ to harass others,” and sought “to create a disincentive for weaponizing our emergency system” in this way, which is “not only a waste of taxpayer resources but also puts law enforcement in danger by requiring them to arrive at a tense . . . situation in which they would not otherwise intervene.” Suppl. Cuiello Decl. ¶15, Ex. 41. The California State Sheriffs’ Association supported the Bill in part because “addressing situations where emergency resources are diverted to harass others is a worthy public policy.” *Id.*

Defendant Rowell misunderstands the harm Plaintiffs need to prove to establish a violation of Section 51.7(b)(2). Defendants mistakenly believe that if Plaintiffs suffered no “physical injuries” and did not need “medical or mental healthcare,” they did not suffer harm. Dkt. 116, p. 16:3-6. The only injury or harm Plaintiffs need to establish is that which is defined by Section 51.7, which is “intimidation by threat of violence,” which the code specifically defines in subsection (b)(2), as a person, (in this case Defendant Houts), knowingly making a false report to a law enforcement agency. *See* Civ. Code, sec. 51.7(b)(2). Section 51.7(b)(2) makes clear that if Plaintiffs show that Defendants Houts knowingly made a false report to law enforcement alleging Plaintiffs were engaged in unlawful activity; knowing the report is false is proof enough that Defendant Houts

1 engaged in “intimidation by threat of violence,” against Plaintiffs, in violation of Section 51.7(b)(2).
 2 Defendants cite no evidence or caselaw to the contrary.

3 Defendant Houts used law enforcement as his “personal concierge” without any concern
 4 about diverting emergency resources simply to harass Plaintiffs because of their political affiliation
 5 and the content of their speech. Section 51.7 was amended specifically to address and punish the
 6 type of behavior rights under Section 51.7(b)(2) when they falsely reported Plaintiffs to law
 7 enforcement.

8 **2. Defendant Houts used violence against Plaintiff Cuiello by ramming**
 9 **his electric utility vehicle into him in violation of Section 51.7.**

10 Section 51.7 gives Plaintiff Cuiello the right to be free from violence committed against
 11 him because of his animal rights political affiliation. Civ. Code, sec. 51.7(b)(1). The parties appear
 12 to agree about the general sequence of events during this important interaction between Defendant
 13 Houts and Plaintiff Cuiello. On May 21, 2022, Defendant Houts rammed his electric utility vehicle
 14 into Plaintiff Cuiello, rather than driving forward and avoiding hitting Plaintiff Cuiello. Dkt. 116,
 15 p. 22-23; Dkt. 84-1, ¶¶36-37; Dkt. 84-18. The evidence shows Defendant Houts rammed into
 16 Plaintiff because of his political affiliation and that Defendant Houts’s bias was a “substantial
 17 factor,” if not the only factor, guiding his conduct. It is clear Defendant Houts was aware of
 18 Plaintiff’s political affiliation as he had harassed Plaintiff the night before, based on Plaintiff’s
 19 political position. Dkt 84-1, ¶¶15-17. Defendant Houts also lied to law enforcement to get law
 20 enforcement to force Plaintiff to demonstrate in the Free Speech Area. Dkt. 84-1, ¶17. When that
 21 attempt failed, Defendant Houts can be seen lamenting that failure in a group with Defendants Hart
 22 and Mayfield. Dkt. 84-1, ¶32, 84-48. Defendant Houts looked visibly disappointed when Defendant
 23 Mayfield stated that Plaintiffs need not demonstrate in the Free Speech Area, lamenting, “I’m not
 24 blaming you all.” *Id.*

25 Additionally, just prior to running the vehicle into Plaintiff Cuiello, who was holding an
 26 animal rights banner, Defendant Houts had just told Plaintiff to not let that banner touch his vehicle.
 27 Dkt. 84-1, ¶36, 84-18. The entire incident is video documented. Absent evidence to the contrary—

1 including the missing testimony of Defendant Houts—there can be no genuine dispute that
 2 Defendant Houts hit Plaintiff solely based on his animus for Plaintiff’s political position. Because
 3 Defendant Houts could have easily driven forward, there was simply no other reason to ram
 4 Plaintiff other than the animus Defendant Houts had openly expressed since his first encounter with
 5 Plaintiff the night before. As Defendant Houts could not restrict Plaintiff through legal means, he
 6 deployed illegal means.

7 Defendants cannot genuinely dispute that ramming into a person with an electric utility
 8 vehicle constitutes violence. Dkt. 116, p. 20:25-26. Violent is defined by Merriam-Webster online
 9 dictionary as “the use of usually harmful or destructive force.” “Violent,” Merriam-Webster.com,
 10 available at <https://www.merriam-webster.com/dictionary/violent> (last visited July 29, 2024). Any
 11 reasonable person would view Defendant Houts ramming his vehicle into Plaintiff as a violent act.

12 The plain language of Section 51.7 gives Plaintiff Cuiello the right to be free from violence
 13 committed against him because of his animal rights political affiliation. In an act of violence,
 14 Defendant Houts intentionally rammed his electric utility vehicle into Plaintiff because of his
 15 political activism, a clear violation of Section 51.7.

16 **C. Defendant Rowell Ranch Rodeo agents George Ferris and Gary Houts**
 17 **assaulted and battered Plaintiffs.**

18 Defendants do not dispute that Defendants Ferris and Houts assaulted and battered Plaintiffs
 19 Bolbol and Cuiello, respectively, as alleged in Plaintiffs’ First and Second Causes of Action. Dkt.
 20 116, pp. 23-24. Rather, Defendants allege that neither Plaintiffs were harmed by these violent torts.
 21 With respect to Plaintiff Bolbol’s battery claim, she need only prove she was harmed *or offended* by
 22 Defendant Ferris’s conduct. CACI No. 1300; *see Kaplan v. Mamelak* 162 Cal.App.4th 637, 645
 23 (2008). Plaintiff Bolbol testified that she “felt scared due to [Defendant Ferris’s] physical
 24 aggression and called out to Plaintiff Cuiello,” to help her. Dkt. 84-1, ¶24. As Defendants admit,
 25 moreover, Defendant Ferris intended to block Plaintiff Bolbol with his body. Dkt. 116, p. 8:19-23.
 26 By repeatedly jumping in front of Plaintiff to block her with his body, Defendant Ferris expressed
 27 an intention to touch Plaintiff Bolbol in an offensive manner if she exercised her right to access the

1 back parking lot. Plaintiff Bolbol reasonably believed she was about to be touched in an offensive
 2 manner and tried to walk around Defendant Ferris who used his body to block her. Plaintiff Bolbol
 3 did not consent to Defendant Ferris's conduct, as she was offended by it. Defendant Ferris's
 4 conduct was the substantial factor in the offense, all evidencing he battered Plaintiff Bolbol.

5 Absent any evidence to the contrary, Plaintiff Bolbol's testimony regarding her offense to
 6 Defendant Ferris's actions satisfies the harm element of her battery claim.

7 Defendant Ferris also committed assault against Plaintiff Bolbol when he touched Plaintiff
 8 Bolbol with his body with intent to offend Plaintiff. "The tort of assault is complete when
 9 anticipation of harm occurs." *Kiseskey v. Carpenters' Trust for Southern California*, 144
 10 Cal.App.3d 222, 232 (1983). Plaintiff Bolbol did not consent to Defendant Ferris touching her and
 11 told him to, "Stop it!" repeatedly. Dkts. 84-3, 84-8. Plaintiff Bolbol was expressly offended by the
 12 touching, as demonstrated by her shouting at him to stop while attempting to walk around him. Dkt.
 13 84-1, ¶22. A reasonable person would have been offended by Defendant Ferris's touching because
 14 it was unwelcome and prevented physical movement. *See Rains v. Superior Court*, 150 Cal. App.
 15 3d 933, 938 (1984) (holding a battery is a violation of an individual's interest in freedom from
 16 intentional, offensive unconsented contacts with a person). Accordingly, the Court should enter
 17 summary judgment against Defendants Rowell Ranch Rodeo and for assault and battery against
 18 Plaintiff Bolbol.

19 Likewise, Plaintiff Cuiello has established harm because of Defendant Houts's assault.
 20 *Kiseskey*, 144 Cal.App.3d at 232. A harmful contact, intentionally done, is the essence of a battery.
 21 *Ashcraft v. King*, 228 Cal. App. 3d 604, 612 (1991). Defendants admit that Defendant Houts "made
 22 contact" with Plaintiff Cuiello. Dkt. 116, p. 9:19-20. Plaintiff Cuiello testified that Defendant
 23 Houts's decision to ram his utility vehicle into him while smiling shook him. Dkt. 84-10, ¶36. For
 24 the remainder of the protest, Plaintiff Cuiello "was concerned Mr. Houts or other rodeo
 25 representatives might use violence" against him or his colleagues, so he "remained vigilant about
 26 where he was in relation to the demonstrators." *Id.* at ¶37. He filed this lawsuit, in part, because he
 27 feared that if Defendant Houts were not held accountable for his actions, Rowell Ranch Rodeo

agents “would feel emboldened to use violence against” him and his colleagues in the future. *Id.* Defendants need not prove the extent of their injury to establish liability on summary judgment. Summary judgement is appropriate here, where Plaintiff Cuiello has demonstrated that he was battered and assaulted by Defendant Houts.

IV. Conclusion

For the foregoing reasons Plaintiffs respectfully request that this Court grant Plaintiffs’ Joint Motion for Partial Summary Judgment on their first, second, third, fourth, and fifth causes of action. Plaintiffs also request this Court deny Defendants’ Cross-Motion for Summary Judgment.

Respectfully submitted,

DATED: July 29, 2024

/s/ Jessica L. Blome
Jessica Blome
Lily R. Rivo
GREENFIRE LAW, PC
Attorney for Plaintiff Deniz Bolbol

DATED: July 29, 2024

Joseph P. Cuiello
JOSEPH P. CUIELLO
Plaintiff In Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July 2024 the foregoing was served on all parties through the Court's electronic filing, CM/ECF system in accordance with Rule 5 of the Federal Rules of Civil Procedure.

GREENFIRE LAW, P.C.

By: /s/ Jessica San Luis
Jessica San Luis